

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 1, Chama Mainstream

Winfield Morten Ditch
Subfile Nos. 3.27 & 4.11

MOTION FOR ORDER TO SHOW CAUSE

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and moves the Court to issue an Order to Show Cause to the persons or entities listed below with respect to the priority date of water rights in Subfiles 3.27 and 4.11 (Winfield Morten Ditch) in the Chama Mainstream Section, and as grounds states the following:

1. The following defendants own portions of the water rights under in Subfiles 3.27 and 4.11 (Winfield Morten Ditch) in the Chama Mainstream Section:

Stanley P. Bader
Arlene M. Bader

Portion of Tr. 3.27

Susanne E. Vertel

Portion of Tr. 3.27

Jack L. Kerr
Janis C. Kerr

Portion of Tr. 3.27

Dahl Harris
Ana Ortiz Harris

Portion of rights in Tr. 3.27 (by transfer)

Grey Revocable Living Trust

Portion of Tr. 3.27 & 4.11

Donald K. Willis Virginia Gabaldo	Portion of Tr. 4.11
Ellen Arntz	Portion of Tr. 4.11
David A. Swingle	Portion of Tr. 4.11
Dan Medina Mickie Medina	Portion of Tr. 4.11
Scott Paul Markman Toshiyuki Kawahara	Portion of Tr. 4.11
Jean A. Archer	Portion of Tr. 4.11

2. The *Order and Decree* filed August 7, 1969 (Doc. No. 509) determined a priority date of 1947 for the water rights under the Winfield Morten Ditch. This priority date was based on a license issued by the New Mexico State Engineer (OSE No. 2590), with a priority date of February 20, 1947, for the appropriation of 270.9 acre feet of water diverted from the Rio Chama through the Winfield Morten Ditch.

3. The lands under the Winfield Morten Ditch were left out of the Order to Show Cause proceedings with respect to the redetermination of priority dates in Section 1. *See generally, Order re Form of Notice and Form of Order to Show Cause re Priority Dates for Individual Irrigation Subfiles* filed October 3, 1994 (Doc. No. 3521); *Order Amending July 8, 1994 Order re Adjudication of Water Right Priorities* filed October 21, 1994 (Doc. No. 3956); *Second Order Amending July 8, 1994 Order re Adjudication of Water Right Priorities* filed December 5, 1994 (Doc. No. 3971).

4. In order to enter a final order on the priorities of all ditches in Section 1, and to hold comprehensive *inter se* proceedings within Section 1 on priorities, the Court should address the question of whether or not the priority date of the Winfield Morten Ditch should be revised.

5. The State believes that there is no basis to reconsider the previous determination of the priority date of the Winfield Morten Ditch (1947), and that the Court should enter an Order that confirms the 1947 priority date after appropriate notice and opportunity to be heard from the persons or entities listed above.

6. An Order to Show Cause should be served on each of the defendants listed above that would require them to notify the Court of any objection they might have to an Order of the Court that would confirm the 1947 priority date. A proposed form of order is attached hereto as Exhibit 1.

7. The Winfield Morten Ditch is private ditch.

WHEREFORE the State of New Mexico requests the Court to issue an Order to Show Cause that requires the defendants listed above to file with the Court, no later than 20 days after service of the Order by first-class mail, any objection they have to an Order of the Court that confirms a priority date of 1947 for the water rights in Subfiles 3.27 and 4.11 (Winfield Morten Ditch) in the Chama Mainstream Section.

Respectfully submitted,

/s/ Ed Newville
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(505) 867-7444 phone
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of June, 2009 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Stanley P. Bader
Arlene M. Bader
P.O. Box 738
Abiquiu, NM 87510

Susanne E. Vertel
1500 Wilderness Gate Rd.
Santa Fe, NM 87505

Jack L. Kerr
Janis C. Kerr
1327 Declovina
Sante Fe, NM 87505

Dahl Harris
Ana Ortiz Harris
1889 Candelaria
Santa Fe, NM 87505

Grey Revocable Living Trust
c/o Samuel R. & Helen Grey
2515 S. Solano Dr.
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Donald K. Willis
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Jean A. Archer
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/s/ Ed Newville

EDWARD G. NEWVILLE